

FENNELL v THE QUEEN (B20/2019)

Court appealed from: Supreme Court of Queensland Court of Appeal
[2017] QCA 154

Date of judgment: 21 July 2017

Special leave granted: 22 March 2019

On 21 March 2016 the Appellant was convicted of murdering Mrs Liselotte Watson on or around 12 November 2012 at Macleay Island. He was later sentenced to life imprisonment.

Mrs Watson was an 85 year old Macleay Island resident for whom the Appellant did occasional odd jobs. She lived alone in a two-storey house and she was killed in her bed by blows to the head with a blunt instrument. It was actually the Appellant who alerted police and expressed concerns about Mrs Watson's welfare on 13 November 2012. When the police, in the company of the Appellant, attended Mrs Watson's residence later that day, they found her body face-down on the floor of her bedroom. It looked as if there had been a break-in. The Crown's case against the Appellant's was entirely circumstantial. It alleged that the Appellant had been stealing from Mrs Watson (to fund his gambling habit) and that the risk that he would soon be discovered provided him with a motive for killing her. The Appellant submitted that an alternative hypothesis consistent with innocence, that of a botched burglary, was reasonably available on the evidence.

Upon appeal, the Appellant submitted that the jury's verdict was unreasonable and that it could not be supported by the evidence. On 21 July 2017 the Queensland Court of Appeal (Gotterson & Philippides JJA, Byrne SJA) unanimously dismissed the Appellant's appeal. Their Honours noted that the task for a Court when an "unreasonable verdict" ground of appeal is raised, is to make an independent assessment of the sufficiency and quality of the evidence at trial. Their task is then to decide whether, upon the whole of the evidence, it was reasonably open to the jury to be satisfied beyond reasonable doubt that the Appellant was guilty of the offence for which he was convicted. The Court of Appeal found that, while this was not a case of evidential perfection, there was sufficient evidence to support the major strands in the Crown's circumstantial case. Furthermore, the alternative hypothesis consistent with innocence proposed by the Appellant was not a reasonable one. The absence of any evidence of a forced entry, the rummaging of drawers or the disturbance of anything in the upper floor of Mrs Watson's home weighed against that theory being accepted.

After considering the evidence as a whole, the Court of Appeal found that it was open to the jury to be satisfied beyond reasonable doubt that the Appellant had murdered Mrs Watson. Their Honours also dismissed the Appellant's other grounds of appeal.

The sole ground of appeal is:

- The Court of Appeal erred in failing to find that the verdict was unreasonable or cannot be supported having regard to the evidence, in part because it made significant errors of fact.